

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RASHEEN KASHIF THOMPSON,
Petitioner.

No. 2 CA-CR 2015-0086-PR
Filed March 31, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Maricopa County

No. CR2012155669001DT

The Honorable Jay L. Davis, Judge Pro Tempore

REVIEW GRANTED; RELIEF GRANTED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Karen Kemper, Deputy County Attorney, Phoenix
Counsel for Respondent

Rasheen Kashif Thompson, Buckeye
In Propria Persona

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MEMORANDUM DECISION

Presiding Judge Kelly authored the decision of the Court, in which Judge Vásquez and Judge Miller concurred.

K E L L Y, Presiding Judge:

¶1 Petitioner Rasheen Thompson seeks review of the trial court's order dismissing his notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Because the court abused its discretion in summarily dismissing the notice, we grant relief.

¶2 Pursuant to a plea agreement, Thompson was convicted of armed robbery and aggravated assault. The trial court sentenced him to eighteen years' imprisonment on the armed robbery conviction and suspended the imposition of sentence on the aggravated assault charge, placing Thompson on a four-year term of probation.

¶3 Thompson thereafter initiated a proceeding for post-conviction relief. The trial court granted relief, vacating the aggravated assault conviction but denying relief on a claim of ineffective assistance of trial counsel. Eleven days after the court filed its ruling, Thompson filed a second notice of post-conviction relief, arguing Rule 32 counsel had been ineffective. The court summarily dismissed the notice, concluding that "[t]here is no Constitutional right to effective assistance of counsel in a state post-conviction relief proceeding."

¶4 While a non-pleading defendant has no right to effective assistance of counsel in post-conviction relief proceedings, *State v. Escareno-Meraz*, 232 Ariz. 586, ¶ 4, 307 P.3d 1013, 1014 (App. 2013), this is not true of pleading defendants such as Thompson. For

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a pleading defendant, “the first post-conviction petition is the procedural equivalent of a first appeal.” *Osterkamp v. Browning*, 226 Ariz. 485, ¶ 24, 250 P.3d 551, 557 (App. 2011). Therefore, such a defendant is entitled to have counsel appointed, *id.* ¶ 15, and to raise a claim of ineffective assistance of Rule 32 counsel in “a timely second post-conviction proceeding,” *id.* ¶ 24. The trial court therefore abused its discretion in summarily dismissing Thompson’s notice.

¶5 For this reason, we grant the petition for review and grant relief.